

In the Matter of)	
)	
Consolidated Request for Review of)	
Decisions of the Universal Service)	CC Docket No. 02-6
Administrator)	
)	
Morehouse Parish School District)	File Nos. SLD-360815
)	
and)	
)	
Jackson Parish School District)	File Nos. SLD-376220
)	
)	
)	

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January 10, 2005

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SUMMARY

Morehouse Parish School District (“Morehouse”) and Jackson Parish School District (“Richland”) (collectively, the “Schools”) and SEND Technologies, LLC (“SEND”) seek review of two decisions of the Universal Service Administrative Company (“USAC”) that upheld decisions of the Schools and Libraries Division (“SLD”) denying the Schools’ requests for Internet access funding for the 2003-2004 funding year. The SLD and USAC denied the Schools’ funding requests because perceived “similarities” between the Schools’ Form 470 applications and the applications of other E-rate Program applicants “suggest” to USAC improper vendor involvement in the Schools’ competitive bidding process.

The factual underpinnings for the “similarities” perceived by USAC and the SLD include similar Form 470 identifiers, similar service descriptions, and minimal mailing assistance from SEND when the Schools’ submitted their completed Form 470 certification pages. USAC claims that the mere existence of these similarities on the Form 470s represents a *per se* competitive bidding violation. USAC’s unproved “suggestion” of service provider involvement based upon permissible similarities in Form 470s, without proof or evidence of actual impermissible service provider involvement (after subjecting the Schools to a lengthy selective review process), is not enough to justify denial of the Schools’ funding requests.

The FCC previously acknowledged in the *Ysleta* case that applicants seeking E-rate Program funds may have similar Form 470s without violating FCC or Program competitive bidding requirements. Furthermore, there is a reasonable explanation for each of these similarities, which the Schools did not have the opportunity to discuss before, which demonstrate that SEND was not impermissibly involved in the Schools’ application or competitive bidding process. All communications between SEND and the Schools were of the type approved under FCC and Program rules, were vendor-neutral, and were only for the purpose of providing

general, basic assistance to the Schools. There are no FCC or Program rules, or relevant decisions, that indicate that the alleged similarities upon which USAC and the SLD base their denials represent violations of the competitive bidding rules. Despite the similarities noted by USAC in the Schools' applications, SEND was not improperly involved in the Schools' competitive bidding processes, and the Schools fully complied with all applicable FCC and Program rules.

It appears that USAC is denying the Schools' year 2003-2004 funding requests simply because they were based on continuation contracts and referenced the Schools' prior year's applications, which USAC also believes were defective due to the same perceived "similarities." The Schools, however, had no opportunity to address any perceived Program violations related to their 2003-2004 applications because USAC did not deny the 2002-2003 applications until *after* the Schools had filed their 2003-2004 applications.

The FCC already has before it another Request for Review that appeals USAC's funding denials for the 2002-2003 applications and raises substantially identical issues as those raised in this case. Accordingly, the Schools and SEND request that the filings be consolidated.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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To: The Commission

CONSOLIDATED REQUEST FOR REVIEW

Morehouse Parish School District (“Morehouse”) and Jackson Parish School District (“Jackson”) (collectively, the “Schools”), through counsel, and SEND Technologies, LLC (“SEND”), pursuant to Section 54.719(c) of the Commission’s rules,¹ submit this Consolidated Request for Review (“Request for Review”) seeking reversal of two decisions of the Administrator of the Universal Service Administrative Company (“USAC”), issued on November 9, 2004.² Specifically, USAC upheld two decisions of the Schools and Libraries Division (“SLD”) that denied the funding requests of Morehouse and Jackson through the Schools and Libraries Universal Service Program (“E-rate Program” or “Program”) for Internet

¹ 47 C.F.R. § 54.719(c).

² Letters from the Universal Service Administrative Company to Mark Stevenson, SEND Technologies, LLC, (November 9, 2004) (“*Decisions on Appeal*”), attached hereto as Exhibits A and B. The SLD initially denied the Schools’ funding requests on June 2, 2004. On July 29, 2004, SEND appealed the SLD’s denials to USAC.

access service for the 2003-2004 funding year. SEND is the service provider with whom the Schools contracted for the service.

As further discussed below, the Commission already has an appeal pending before it that raise substantially identical issues as those raised in the instant Request for Review.

Accordingly, SEND and the Schools request that the Commission consolidate the filings.

I. INTRODUCTION AND REQUEST TO CONSOLIDATE.

The funding requests for various Louisiana schools for the 2002-2003 funding year were denied due to “similarities” between their Form 470 applications and the applications of other E-rate Program applicants. (As discussed below, USAC denied the Schools’ 2003-2004 funding requests, which are the subject of the instant Request for Review, for exactly the same reasons.) The SLD and USAC made the presumption, incorrectly, that similarities among the Form 470 applications submitted by the schools “suggest” SEND’s involvement in the competitive bidding process in a manner that violates Commission and Program competitive bidding rules.

As explained below, the factual underpinnings of the “similarities” perceived by USAC and the SLD demonstrate that SEND was not impermissibly involved in the competitive bidding process in violation of Commission or Program rules. Moreover, an unproved “suggestion” of involvement based upon these similarities does not justify denying applications for needed federal funds for the Schools. Morehouse and Richland Parish School District (“Richland”), whose year 2002-2003 funding requests were denied by USAC based upon perceived “similarities,” filed with the FCC a request for review of USAC’s decisions on August 23, 2004 (the “Morehouse/ Richland Request for Review”).³

³ See Consolidated Request for Review of Decisions of the Universal Service Administrator, Morehouse Parish School District and Richland Parish School District, CC Docket No. 02-6 (filed Aug. 23, 2004). The undersigned is counsel for Morehouse, Richland and Jackson.

Due to USAC's delay in processing the year 2002-2003 funding requests, SEND had offered its customers the option of seeking new competitive bids for the 2003-2004 funding year. Many of SEND's customers accepted the offer, including Jackson.⁴ Because of many factors, there was greater competition and most applicants received multiple proposals from local and out-of-state vendors. SEND was chosen again as the provider for most of its customers.⁵ Because SEND remained the lowest-cost provider, various schools simply continued their 2002-2003 contracts with SEND and, since they were unaware of any perceived problems with the prior year's applications, referenced their year 2002-2003 Form 470s when they sought funding for year 2003-2004.

It appears that USAC is denying Morehouse's and Jackson's year 2003-2004 funding requests based on alleged "similarities" simply because the Schools referenced their prior year's applications, which USAC incorrectly believes to be defective due to the same perceived "similarities."⁶

⁴ As noted in the Morehouse/ Richland Request for Review, Morehouse conducted a very comprehensive RFP process for its 2002-2003 requests in which SEND's bid was half the cost of the other bidder. Morehouse/ Richland Request for Review at 13, n.21. Because it undertook an RFP for the prior year, Morehouse decided that it would continue its existing contract for Internet access rather than seeking new competitive bids.

⁵ Even in cases in which SEND was not the chosen vendor again, it still submitted the lowest bid by more than \$400,000.

⁶ As discussed above, Morehouse's year 2002-2003 funding request was denied based on alleged similarities and is the subject of an appeal currently pending before the Commission. Jackson's year 2002-2003 funding request was denied by USAC due to an administrative error by the School, and was not appealed. Based upon the recent November 9, 2004 denial of Jackson's year 2003-2004, however, it is believed that USAC would have denied Jackson's year 2002-2003 funding request based upon perceived "similarities" if the administrative error had not occurred. The conclusion that USAC denied the Schools' 2003-2004 requests for Internet access solely because they were continuation contracts also is supported by the fact that the Schools' 2003-2004 funding requests for internal connections, which were *not* subject to

Because the instant Request for Review raises the same issues that are present in the Morehouse/ Richland Request for Review, SEND and the Schools respectfully request that they be consolidated. SEND and the Schools also urge the Commission to act quickly on these Requests for Review. USAC has other multiple cases pending before it for the 2002, 2003 and 2004 funding years that have been or likely will be denied based upon the same perceived similarities raised in the Requests for Review. Consolidation and quick resolution of both Requests for Review would provide USAC with needed guidance on the “similarities” issue and forestall the needless expenditure of time and resources on the part of the Commission, USAC, the Schools and SEND in litigating the same issue multiple times.⁷

II. DESPITE THE “SUGGESTION” OF COMPETITIVE BIDDING VIOLATIONS DUE TO “SIMILARITIES” IN THE SCHOOLS’ FORM 470 APPLICATIONS, THERE WERE NO ACTUAL COMPETITIVE BIDDING VIOLATIONS.

The SLD initially denied the Schools’ funding requests for Internet access services for the following reason:

Similarities in Form 470s and in the preparation and submission of Forms 470s certification pages amongst applicants using this service provider *suggest* service provider involvement in the competitive bidding process. (*emphasis added*)

The SLD’s generic explanation provided no explanation of the facts that led to the SLD’s conclusion. Nor did the SLD cite to any actual *proof* of impermissible service provider involvement in preparation of the applications or execution of the competitive bidding process, despite the SLD having subjected the Schools to a selective review process during which the

continuation contracts, were granted by USAC. USAC denied only the funding requests that were based upon continuation contracts from the 2002-2003 funding year.

⁷ Counsel for SEND previously met with Commission staff to discuss the pending Morehouse/ Richland Request for Review. *See* Ex Parte Letter from Jennifer L. Richter, counsel to SEND, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (Dec. 10, 2004).

Schools provided the SLD with detailed information about their application and competitive bidding process. Given that the SLD provided no information concerning these alleged similarities, the Schools were left only to surmise the basis for the SLD's claims when they appealed the SLD's decision to USAC.⁸ USAC's *Decisions on Appeal*, which upheld the funding denials by the SLD, provided slightly more information regarding the alleged similarities:

[Morehouse/ Jackson] Parish School Board's Form 470 identifier, Form 470 service descriptions, and Form 470 certification page submission by Mark Stevenson, President of SEND Technologies, LLC, displayed striking similarities to those of other applicants that selected SEND Technologies, LLC as their vendor. The similarities in the Forms 470 were only noted on applications that had SEND Technologies, LLC as a vendor, which indicates that SEND Technologies, LLC was improperly involved in the competitive bidding and vendor selection processes.⁹

These similarities, which SEND and the Schools' had not had an opportunity to explain before the Morehouse/ Richland Request for Review, are not indicative of a *per se* violation of the FCC's and the Program's competitive bidding rules. Any communications between the Schools and SEND were of the type approved by Program rules, were vendor-neutral, and were only for the purpose of providing general, basic assistance to the Schools. There are no FCC or Program

⁸ Counsel for SEND previously asked the SLD to clarify its reasoning for denying the Schools' funding requests so that the Schools could respond appropriately to the SLD's allegations. See letter from Jennifer L. Richter, counsel to SEND, to Cynthia Schultz, Director of Service Provider Support, Universal Service Administrative Company (Feb. 10, 2004). Although the FCC has recognized that an applicant's appeal of a denial of a funding request, and consideration of that appeal, is impeded when the record developed by the SLD "does not reveal the facts and reasoning on which [the] SLD's determination is based with clarity," the SLD did not provide any clarifying information. See email from Cynthia Schultz to Jennifer L. Kostyu, counsel to SEND (Mar. 4, 2004). The correspondence between counsel and Ms. Schultz is attached hereto as Exhibit C.

⁹ *Decisions on Appeal* at 2. USAC's allegation that similarities exist only on applications that list SEND as a vendor is inaccurate. At least one other E-rate applicant for the 2002-2003 funding year, West Carroll Parish School District, used a similar Form 470 to that of the Schools, but did not choose SEND as its vendor.

rules, or relevant decisions, that indicate that the alleged similarities upon which USAC and the SLD base their denials reflect violations of the competitive bidding rules. Despite the similarities noted among the applications, SEND was not improperly involved in the Schools' competitive bidding and vendor selection processes, and the Schools fully complied with all applicable competitive bidding rules.

A. SEND's Actions Did Not Contravene Applicable Guidelines For Permissible Service Provider Involvement.

The SLD describes on its website what role a service provider can take without violating the FCC's and the SLD's competitive bidding rules.¹⁰ For example, the SLD explains that service providers can communicate with an applicant so long as such communication is neutral and does not taint the competitive bidding process. A service provider can provide basic information regarding the E-rate Program to an applicant, and can assist with an applicant's RFPs so long as the assistance is neutral. A service provider also can provide an applicant with technical assistance on the development of a technology plan, including information regarding products and services that are being furnished to the applicant.

The SLD explains on its website that a service provider *cannot*: (1) sign a Form 470 or 471 for an applicant; (2) be listed as a contact person on a Form 470; (3) act as a technology plan approver for an applicant; (4) prepare RFPs for an applicant; (5) provide or waive funding for an applicant's undiscounted portion of equipment and services obtained through the E-rate Program; (6) coerce or pressure an applicant to use a specific service provider; and (7) interfere with or obstruct an applicant's competitive bidding process.¹¹ USAC and the SLD have not proven that SEND engaged in any of the foregoing prohibited conduct.

¹⁰ USAC, "Service Provider Manual, Chapter 5 – Service Provider Role in Assisting Customers," available at www.sl.universalservice.org/vendor/manual/chapter5.asp.

¹¹ *Id.*

Simply because the year 2002-2003 Form 470s submitted by the Schools may bear some similarity, and thus also the 2003-2004 Form 470s, this does not justify a finding that a service provider was improperly involved in the Schools' competitive bidding process. The FCC has previously acknowledged that applicants seeking E-rate Program funds may have similar technology plans and Form 470s without violating the E-rate Program's competitive bidding requirements.¹² As the SLD's own Program rules reveal, similarity in applications involving the same service provider could be due to *permissible* service provider communications with the Schools (*i.e.*, a service provider can provide basic information regarding the E-rate Program, and can provide an applicant with technical assistance on the development of a technology plan, including information regarding products and services that are being furnished to the applicant).

In the *Ysleta* case the E-rate Program applicants had submitted "carbon copy" Form 470s that listed every service or product eligible for discounts. Although the FCC concluded that such comprehensive lists did not comport with the competitive bidding requirements under the E-rate Program,¹³ it noted that applicants may validly have the same or similar filings.¹⁴ USAC states in its *Decisions on Appeal*, however, that *Ysleta* is inapposite to the instant case because *Ysleta* concerned:

"encyclopedia Form 470s" that contain a list of virtually all eligible services. The FCC specifically found that where the Administrator finds carbon copy technology plans and Form 470s across a series of applications, especially where the same service provider is involved, it is appropriate for the Administrator to review these applications with more scrutiny to ensure that there has been no improper service provider

¹² *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas*, CC Docket Nos. 96-45, 97-21, FCC No. 03-313 (Dec. 8, 2003) ("*Ysleta*"). In *Ysleta* the Commission addressed multiple requests to review the decisions of the SLD that were filed by E-rate applicants, but combined the requests as they had almost identical fact patterns.

¹³ *Id.* ¶¶ 26-37.

¹⁴ *Id.* ¶ 30.

involvement in the competitive bidding process. The SLD has not exceeded its authority in this instance. Like the *Ysleta* Order, the Winston-Salem Order expressed concern related to the use of overly broad Form 470s. However, nowhere in either order did the FCC determine that “similarities” in Form 470 applications did not provide a basis for denial due to improper vendor involvement.¹⁵

Despite USAC’s contention, the Schools and SEND do not object to USAC’s authority to scrutinize certain applications or deny applications if there is improper vendor involvement. Rather the Schools and SEND disagree with USAC’s apparent perception that the mere existence of similarities across Form 470 applications *per se* equates to improper service provider involvement and a competitive bidding violation. There was no improper service provider involvement in the present case. Both SEND and the Schools complied with all known rules and guidance regarding competitive bidding for the services they sought.

USAC does not acknowledge why *Ysleta* is significant in the instant case. The FCC in *Ysleta* explicitly recognized that there are valid reasons why similarities may exist across Form 470 applications. By assuming the opposite, USAC creates a new policy – *i.e.*, that perceived similarities across Form 470s, even without actual proof of impermissible service provider involvement, indicate *per se* violations of the competitive bidding rules and justify denial of E-rate funding requests. USAC is not empowered to make this policy, interpret any unclear rule promulgated by the Commission, or create the equivalent of new Program guidelines.¹⁶ In addition, such a policy leads to absurd and unintended results when funding requests are denied based upon nothing more than similarities among applications. Such similarities are not tantamount to impermissible service provider involvement or violations of the competitive bidding rules. USAC and the SLD subjected the Schools in this case to a rigorous two year

¹⁵ *Decisions on Appeal* at 2.

¹⁶ See 47 C.F.R. § 54.702(c); *Changes to the Board of Directors of the Nat’l Exchange Carrier Ass’n, Inc.*, 13 FCC Rcd 25058, 25066-67 (1998).

selective review process and received information from the Schools about how they completed their applications and undertook competitive bidding for the services they sought. USAC and the SLD did not learn, nor have they alleged, any specific facts that indicate that there was, *in fact*, impermissible service provider involvement. They have only alleged an unproved inference or “suggestion” of such involvement based upon perceived similarities among applications. An inference or a “suggestion” of service provider involvement is not enough justification to deny applications for needed federal funds for the Schools.

B. The Perceived “Similarities” Across The Schools’ Form 470 Applications Do Not Signify That SEND Was Improperly Involved In The Schools’ Competitive Bidding Process.

As noted above, the application “similarities” cited by USAC in its *Decisions on Appeal* include the following: “[Morehouse/ Jackson] Parish School Board’s Form 470 identifier, Form 470 service descriptions, and Form 470 certification page submission by Mark Stevenson, President of SEND Technologies, LLC....”¹⁷ Each of these alleged similarities can be easily explained, and the factual underpinnings do not indicate that there was impermissible service provider involvement that tainted the competitive bidding process.

Form 470 Identifiers. The Schools’ use of certain Form 470 identifiers (*i.e.*, the school district number assigned to the Schools by the state) is a decision the Schools made, and is not connected to SEND. The Form 470 identifier is a label placed on the Form 470 that is chosen solely by the applicant to help the applicant identify the Form 470 at some later date. The Schools (and other school districts in Louisiana) have used their school district number as their Form 470 identifier for multiple years. For example, Morehouse’s school district number and Form 470 identifier are “034” and Jackson’s are “025.” Several years ago, the State conducted seminars (and still does so from time to time) regarding the benefits of participating in the E-rate

¹⁷ *Decisions on Appeal* at 2.

Program and how to apply for funding under Program rules, including completing Form 470s.¹⁸

Some of the school districts in Louisiana eventually established a pattern for common elements in the Form 470, including the Form 470 identifier. To maintain continuity in their applications from year to year, the Schools continue to use the same identifier. The school district numbers / application identifiers assigned to the Schools by the state have no connection to SEND, and could not be interpreted as representing impermissible service provider involvement.

Service Descriptions. Any perceived similarities in service descriptions on the Schools' Form 470s also fail to demonstrate that SEND was impermissibly involved in their competitive bidding processes. SLD Program rules state that service providers can communicate with applicants and provide basic information regarding the E-rate Program, including information regarding products and services.¹⁹ Morehouse, Jackson and other Louisiana schools participated in training sessions and workshops held by USAC and various vendors, including SEND, which resulted in the development of a template for service descriptions. Accordingly, some of the service descriptions submitted by the Schools are "similar," but such similarities are allowed and acknowledged by the FCC. It is critical to note that while the service descriptions might be similar, each School requested different services pursuant to their Form 470 applications in order to respond to their unique needs.²⁰ For the foregoing reasons, the service descriptions contained

¹⁸ USAC also holds training sessions and workshops for Program participants. In the early years of the E-rate Program, vendors (including BellSouth, CenturyTel and SEND) sometimes conducted training sessions in a neutral, advisory role, to provide basic information about the E-rate Program and the application process to Program participants. Such general, basic assistance is explicitly allowed under Commission and Program rules. *See* USAC, "Service Provider Manual, Chapter 5 - Service Provider Role in Assisting Customers, available at <http://www.sl.universalservice.org/vendor/manual/chapter5.asp>.

¹⁹ USAC, "Service Provider Manual, Chapter 5 – Service Provider Role in Assisting Customers," available at www.sl.universalservice.org/vendor/manual/chapter5.asp.

²⁰ Copies of the Schools' 2002-2003 Form 470s and 2003-2004 Form 471s (which reference the 2002-2003 Form 470s) are attached as Exhibits D-G. We note that USAC added a

on the Form 470s are similar, but such similarity is specifically allowed and acknowledged by the FCC and by the Program rules.

The FCC stated in *Ysleta* that “while we do expect some variation among individual applicants, we stress that we are not prohibiting a state or school district from seeking uniformity in technological development, *i.e.*, through the use of statewide technology plans or requiring applicants to seek the same level or types of services.”²¹ As explained above, any similarities among the Schools’ Form 470s and the preparation thereof were due to decisions made by the Schools, or permissible discussions and collaborations *between the Schools*, and permissible discussions between the Schools and SEND. Such communications did not violate any SLD Program rules or the rules and regulations of the FCC. Each School prepared its own applications and determined its own need for services. To save time and limited resources, they created example filings that each School could use to ensure that they complied with the E-Rate Program’s application and competitive bidding rules. Any communications between the Schools and SEND were vendor-neutral, as required by FCC and Program rules.

FCC and E-rate Program rules do not prohibit applicants from corresponding with each other for the purpose of obtaining Program support. In fact, such a prohibition is counter to the policies of the E-rate Program. Such collaboration allows applicants to save time and limited

statement to its Form 470 for the 2003 funding year that states “service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process.” It appears that this notice is automatically put on all Form 470s that are pulled from USAC’s website, even if the Form 470s were filed *prior* to the addition of the notice. The attached 2002-2003 Form 470 for Morehouse was downloaded from USAC’s website prior to the form change and therefore does not include the notice. Although inclusion of the notice prior to the 2003-2004 application filing deadline would not have changed the analysis above, we note for completeness that because the attached 2002-2003 Form 470 for Jackson was downloaded after the form change took place, the notice appears on the form (even though it was not there when the form was filed).

²¹ *Id.* ¶ 30, n.90.

resources and obtain services more quickly and efficiently to the benefit of students and faculty. Since applicants do not submit bids, there would be no reason why their collaboration or sharing of information would violate the rules or the spirit of the E-rate Program. In addition, the SLD regularly holds workshops and meetings for applicants, providing them with information and hand-out materials about the application process. A certain amount of collaboration and coordination among applicants is expected and encouraged.

Any communications between SEND and the Schools regarding the funding requests that are the subject of this Request for Review was to provide general, basic assistance to the Schools regarding the E-rate Program and technical information the Schools needed to develop their technology plans. Such communications are clearly allowed under FCC and SLD rules. SEND was very conscientious of any communications that could be misinterpreted as impermissible. At the time the Schools were developing their technology plans and seeking competitive bids for internal connections and access services, SEND was undergoing an audit by the State of Louisiana Legislative Auditor. SEND and the Schools did not violate program rules and would not have violated program rules in any event, but the presence of the Legislative Auditor meant that special precautions were taken to ensure there would not be even the appearance of impropriety in communications between SEND and the Schools.

Mailing. The final similarity among the applications noted by USAC is: “Form 470 certification page submission by Mark Stevenson.”²² Mark Stevenson is the president of SEND. USAC’s characterization is somewhat misleading. Mark Stevenson did not “submit” Form 470 certification pages for the Schools. The Schools prepared their own applications online, and signed and submitted their own certification pages for the SLD’s consideration. Because timely delivery of regular mail is not guaranteed, and loss of a Form 470 certification would preclude

²² *Decisions on Appeal* at 2.

receiving any E-rate support, overnight delivery is preferred so that mailings can be tracked in the event something goes awry. In order to use an overnight delivery service, the Schools were required to submit and receive approval for a purchase order, even though the cost of an overnight package is *de minimis*. Given SEND's close proximity to a FedEx location, its relative ease in using the service, and the *de minimis* cost of overnight delivery (\$16.00), SEND offered to overnight the Form 470s certifications that were completed by the Schools to the SLD.²³ Neither the Schools nor SEND believe that the simple act of mailing the certifications could be construed as inappropriate involvement by a service provider and a competitive bidding violation, especially in light of the fact of the minimal cost of overnight delivery and the fact that neither the FCC nor the SLD stated that doing so could be considered improper involvement by a vendor. SEND's act of sending overnight the completed Form 470 certification pages, did not impact the competitive bidding processes of Morehouse, Jackson or other schools. Each of the Schools sought competitive bids by posting their Form 470s on the SLD website as required by FCC and Program rules, and based upon the bids various vendors submitted, some schools chose SEND, some chose SEND and other providers for different services, and some chose providers other than SEND. Providing minimal mailing assistance clearly did not, in practical effect, taint the competitive bidding process or the independence of the schools in choosing service providers, nor did it violate any of the FCC's or the Program's competitive bidding rules.

²³ In some cases the schools may have mailed their certifications to USAC themselves, but simply used SEND's FedEx account to do so.

III. CONCLUSION.

In view of the foregoing, the Schools and SEND request that the FCC overrule USAC's decisions that denied the Schools' funding requests.

Respectfully submitted,

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January 10, 2005

CERTIFICATE OF SERVICE

I, Theresa Rollins, certify on this 10th day of January, 2005, a copy of the foregoing Request for Review has been served via electronic mail (*) or first class mail, postage pre-paid, to the following:

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